

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

3BA INTERNATIONAL, LLC, a  
Washington Limited Liability Corporation,

Plaintiff,

v.

KEVIN LUBAHN, KEVIN ELLIS, John  
Does 1 -100, and the respective MARITAL  
COMMUNITIES composed thereof, and  
3BA PROPERTIES, LLC, a Washington  
Corporation,

Defendants.

No.

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

Plaintiff 3BA International, LLC ("3BA" or "Plaintiff"), by and through its  
undersigned counsel, alleges as follows:

**I. NATURE OF DISPUTE**

1. 3BA seeks temporary and permanent injunctive relief and damages against  
Defendants Kevin LuBahn, Kevin Ellis, John Does 1-100, and their marital communities,  
and 3BA Properties, LLC, (collectively "Defendants"), for (a) their conspiracy to steal

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF AND NOTICE OF  
APPLICABILITY OF FOREIGN LAW – 1

72005-0003/LEGAL18340400.1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 3BA's confidential proprietary information, trade secrets, and resources to form a company  
 2 to establish a competing 3-on-3 professional basketball league; (b) making fraudulent  
 3 misrepresentations to 3BA investors and potential investors, including, but not limited to,  
 4 Defendants' alleged ownership of 3BA's intellectual property; and (c) utilizing in any way  
 5 3BA's confidential proprietary information, trade secrets, resources and intellectual  
 6 property, to establish a competing 3-on-3 professional basketball league.  
 7  
 8  
 9  
 10  
 11

12 2. Defendants were previously employees of 3BA and conspired while  
 13 employed by 3BA to steal and misappropriate 3BA's confidential proprietary information,  
 14 trade secrets, and resources, to start a competing league. Defendants' unlawful actions  
 15 were memorialized in meeting "minutes" and a written timeline where Defendants  
 16 orchestrated their plan to literally steal and misappropriate 3BA's resources to establish a  
 17 competing 3-on-3 professional basketball league. Defendants' brazen misconduct and  
 18 misappropriation of intellectual property extended to naming the competing organization  
 19 "3BA Properties LLC."  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

29 3. Defendants have also tortiously interfered with 3BA business relationships  
 30 and misrepresented to potential 3BA investors that they own 3BA's intellectual property,  
 31 and attempted to persuade 3BA investors and potential investors to invest in their  
 32 competing company, 3BA Properties, LLC, instead of 3BA.  
 33  
 34  
 35  
 36  
 37

## 38 II. PARTIES, JURISDICTION AND VENUE

39 4. Plaintiff 3BA is a Washington limited liability corporation.

40 5. Upon information and belief, Defendant Kevin LuBahn is a citizen of  
 41 Washington, who resides in King County.  
 42  
 43

44 6. Upon information and belief, Defendant Kevin Ellis is a citizen of  
 45 Washington, who resides in Pierce County.  
 46  
 47



1           14.     3BA has franchise teams under contract in several cities in the United States  
2  
3     and plans to expand to additional cities and countries in the future. 3BA is in the process  
4  
5     of meeting with potential identified investors and forming additional franchises in several  
6  
7     cities.

8  
9           15.     3BA also has plans to televise games on regional and national television, as  
10  
11    well as broadcasting games on the Internet and radio stations.

12  
13           16.     Mr. LuBahn was one of the original founders of the 3BA game concept and  
14  
15    originally developed and owned some of the game's intellectual property.

16  
17           17.     As a founder of the game played by 3BA, Mr. LuBahn was involved in all  
18  
19    developmental aspects of the game for 3BA. For example, Mr. LuBahn was heavily  
20  
21    involved in drafting the rules of the game, the formation of the league, developing  
22  
23    franchises, identifying key contacts, sponsors, investors, and vendors, recruiting players  
24  
25    and coaches, and developing business strategies for the league and individual teams. Mr.  
26  
27    Ellis assisted in most of those efforts and was extensively involved with establishing and  
28  
29    building 3BA.

30  
31           18.     Despite being significant contributors to the 3BA game in many respects,  
32  
33    Mr. LuBahn and Mr. Ellis never had the business or financial acumen to successfully  
34  
35    develop or launch a business. Mr. LuBahn filed for personal chapter 7 bankruptcy in 2007.  
36  
37    In his bankruptcy proceeding, Mr. LuBahn failed to disclose the 3BA game intellectual  
38  
39    property he owned at the time. Mr. Claunch paid for Mr. LuBahn to reopen his personal  
40  
41    bankruptcy proceeding, so that Mr. LuBahn could properly disclose his 3BA game  
42  
43    intellectual property, and if necessary, to sell those assets to satisfy his creditors in  
44  
45    bankruptcy.

1           19.     In Mr. LuBahn's second bankruptcy proceeding, the Bankruptcy Trustee  
 2 sold all of Mr. LuBahn's 3BA game intellectual property rights, including trademarks,  
 3 copyrights and registered domain names for \$5,000, to Mr. Claunch. The fair market value  
 4 of the intellectual property at the time of the purchase in September 2008, was \$1,509. As  
 5 a result of his personal bankruptcy and his sale of 3BA game intellectual property, through  
 6 the Bankruptcy transfer, Mr. LuBahn transferred any and all intellectual property rights  
 7 that he had in the 3BA game concept, including, but not limited to, trademarks, copyrights  
 8 and domain names, to Mr. Claunch. Mr. LuBahn has never had an ownership interest in  
 9 3BA International, LLC.  
 10

11           20.     After forming 3BA, Mr. Claunch organized 3BA into a functional business  
 12 structure and hired employees with clear roles and titles. Mr. Claunch paid various  
 13 professionals to develop 3BA's confidential and proprietary documents and information,  
 14 including, but not limited to, an Operations Manual, Constitution, League By-Laws, an  
 15 Official Game Rulebook, Franchise Contracts, Franchise Disclosure Documents,  
 16 Sponsorship Contracts, Player Contracts, Coaching Contracts, and Vendor Contracts. 3BA  
 17 took steps to protect its confidential and proprietary information and trade secrets from  
 18 disclosure to non-3BA employees and the public, including storing the data on password  
 19 protected computers and in a secure email server.  
 20

21           21.     Mr. Claunch personally brought in and secured contracts with three (3)  
 22 investor groups to purchase franchises.  
 23

#### 24 **B.     Mr. LuBahn's Employment with 3BA**

25           22.     Mr. LuBahn was hired by Mr. Claunch as an employee of 3BA with the title  
 26 of Executive Board Member. As an Executive Board Member, one of Mr. LuBahn's  
 27 primary functions was to develop relationships with potential investors and sell franchises.  
 28

23. As an Executive Board Member of 3BA, Mr. LuBahn had access to all of 3BA's confidential proprietary and trade secret information. For example, Mr. LuBahn is uniquely and intimately familiar with 3BA's confidential sales, marketing and development information, including current and future league expansion plans, deals, sponsorship and partnership strategies, market positioning and strategy, technical trade secrets, investor strategies, the identity and location of potential investors, and operational strategies.

24. During his 3BA employment, Mr. LuBahn had access to critical 3BA documents and electronic data containing information related to 3BA's operations, potential investors, business opportunities, sponsors, trade secrets, 3BA's by-laws, operations manual, franchise agreements, key relationships with athletes and vendors, 3BA's website and other intellectual property. These documents and electronic data included Memorandums of Understandings, model LLC agreements, customer lists, investor lists, business plans, and organizational strategies.

**C. Mr. Ellis' Employment with 3BA**

25. Mr. Ellis was also employed as an Executive Board Member of 3BA. Similar to Mr. LuBahn, as an Executive Board Member of 3BA Mr. Ellis was extensively involved in 3BA's operations and also had access to 3BA's confidential proprietary and trade secret information, and other resources. 3BA terminated all relationships with Mr. Ellis, including employment, on May 18, 2010.

**D. Defendants' Conspiracy to Steal and Misappropriate 3BA's Confidential Proprietary Information, Trade Secrets, and Resources to Start a Competing League**

26. 3BA recently learned that during their 3BA employment, Defendants LuBahn and Ellis had meetings April 23 and 26, to conspire to steal and misappropriate 3BA's confidential proprietary information, trade secrets, and resources to form new

1 competing league. During these meetings, Mr. LuBahn and Mr. Ellis discussed how they  
2 planned to steal and misappropriate 3BA's confidential proprietary information, trade  
3 secrets, investors, and all other 3BA information and resources useful to them in forming  
4 the competing league. In particular, Mr. LuBahn and Mr. Ellis discussed how they were  
5 going to drop the "bomb" on 3BA upon the execution of their corporate raid. Incredibly,  
6 they recorded "minutes" of their meetings to orchestrate their corporate raid and also  
7 developed an 18 month written timeline detailing exactly how they were going to steal  
8 3BA confidential proprietary information, trade secrets, contacts, vendors, sponsors,  
9 investors, contracts and all other 3BA resources and information useful to them in forming  
10 their competing league. The minutes and timeline also discuss Mr. LuBahn's and Mr. Ellis'  
11 plan to form two (2) competing companies by stealing the 3BA's resources and their plan to  
12 contact all of 3BA's proprietary contacts who they felt would come with them, including  
13 every athlete, vendor and associate they had dealt with over the prior 5 years.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 27. Upon information and belief, John Does 1-100 also conspired with  
28 Defendants to steal all of 3BA's intellectual property, trade secrets, confidential proprietary  
29 information, and resources.

30  
31  
32  
33 28. On April 26, 2010, Mr. LuBahn registered a new corporation with the  
34 Washington Secretary of State called "3BA Properties LLC." Mr. LuBahn is listed as the  
35 registered agent at the address of 2650 Alki Ave. SW, Seattle, WA 98116. Mr. LuBahn  
36 also purchased protected registrations for domain names that he plans to use for his  
37 competing company (3BA.com, 3BA.net, and 3BA.org) – those domain names belong to  
38 3BA pursuant to Mr. LuBahn's personal bankruptcy and one is the current address of the  
39 3BA website (3BA.com). 3BA has exclusive rights to the name "3BA" and its trademarks,  
40 copyrights, and domain names, and has not granted any licenses whatsoever to Defendants.  
41  
42  
43  
44  
45  
46  
47



1 Defendants are unlawfully using 3BA's actual name ("3BA") and trademarks in a variety of  
2 ways, including on letterhead for the new league, meeting minutes, and on correspondence  
3 to potential investors in their efforts to secure financing for their competing league.  
4

5 Defendant 3BA Properties LLC is therefore an unlawful beneficiary of Mr. LuBahn's and  
6 Mr. Ellis' unlawful conduct.  
7

8  
9  
10  
11 **E. Mr. LuBahn's Fraudulent Misrepresentations to Potential 3BA Investors and/or**  
12 **Franchisees**

13  
14 29. Mr. LuBahn has also made numerous fraudulent misrepresentations to  
15 various individuals regarding his relationship to 3BA during and after his 3BA  
16 employment. For example, he has fraudulently referred to himself by titles he has never  
17 held, including 3BA's Owner, President, Partner, Manager, CEO, and Founder.  
18

19  
20 30. Lewis Hill was a significant potential investor of 3BA based in Dallas,  
21 Texas. Recently, 3BA entered into a signed Memorandum of Understanding with Mr. Hill  
22 regarding the purchase of a 3BA franchise in Dallas, Texas. 3BA was scheduled to have a  
23 meeting with Mr. Hill on Friday April 30, 2010, to finalize and execute a franchise  
24 purchase agreement.  
25

26  
27 31. Before the meeting with Mr. Hill occurred, Mr. LuBahn engaged in  
28 communications with Mr. Hill which were damaging and injurious to 3BA. Specifically,  
29 on or before April 23, 2010, while still employed by 3BA, Mr. LuBahn misrepresented to  
30 Mr. Hill that he personally owned 3BA's intellectual property and that 3BA did not own it,  
31 and attempted to persuade Mr. Hill to invest in his new competing league instead of in  
32 3BA.  
33

34  
35 32. Due to Mr. LuBahn's misrepresentations, Mr. Hill cancelled his meeting  
36 with 3BA, did not invest in 3BA, and did not purchase a 3BA franchise.  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47



1           33.     Upon learning of Mr. LuBahn's actions, 3BA immediately terminated all  
2 relationships with Mr. LuBahn, including employment, on April 29, 2010. 3BA gave clear  
3 notice of the termination to Mr. LuBahn in a hand-delivered letter which demanded that  
4 Mr. LuBahn cease and desist from continuing to engage in conduct detrimental to the  
5 business interests of 3BA.  
6  
7

8  
9  
10           34.     Despite receiving the cease and desist letter on April 29, 2010, Mr. LuBahn  
11 has continued to engage in unlawful conduct that is injurious and harmful to 3BA. On  
12 information and belief, Mr. LuBahn has continued to contact potential 3BA investors,  
13 claimed that he, not 3BA, owns 3BA's intellectual property, and requested that 3BA's  
14 potential franchisees invest in his competing league rather than 3BA. Mr. LuBahn used  
15 3BA's confidential proprietary information and trade secrets he acquired during his 3BA  
16 employment to identify and contact potential investors.  
17  
18  
19  
20  
21  
22  
23  
24

25 **F.     Defendants' Theft of 3BA's Website and Other Company Property**

26           35.     After receiving formal notice of his discharge from 3BA, Mr. LuBahn  
27 engaged in additional malicious and illegal acts to cause significant harm to 3BA.  
28 Specifically, Mr. LuBahn transferred 3BA's website to a new website manager and  
29 changed all the passwords, thereby converting 3BA's entire website for his own use and  
30 depriving 3BA of any access to the website.  
31  
32  
33  
34  
35  
36

37           36.     Mr. LuBahn also hacked into 3BA's employees' email accounts, and  
38 directed that blind copies of those employees' incoming and outgoing emails be sent to his  
39 personal email account. Based on information and belief, Mr. LuBahn reviewed other 3BA  
40 employees' emails to gain an unfair advantage in trying to establish their competing league.  
41 3BA was forced to contact its intellectual property attorney to reacquire its own website  
42 and email accounts.  
43  
44  
45  
46  
47

1           37. Defendants have stolen and/or unlawfully retained key company records,  
2 documents, and electronic data such as franchise agreements, franchise disclosure  
3 documents, and contracts with athletes, coaches and vendors. They also kept copies of  
4 customer lists, investor lists, LLC agreements, lists of sponsors, key vendors and potential  
5 sponsors. Mr. LuBahn and Mr. Ellis also made copies of innumerable 3BA emails and  
6 correspondence to gain an unfair advantage in forming their competing league.  
7  
8  
9

10  
11  
12           38. Mr. LuBahn and Mr. Ellis were provided company laptops and Blackberry  
13 devices that they have refused to return despite their discharge. The laptops contain  
14 significant confidential proprietary electronic documents and data stored on the hard drive  
15 dating back to the origination of the league. The Blackberries also contain confidential  
16 3BA contacts information. The laptops and Blackberry devices and their contents are  
17 3BA's property.  
18  
19  
20  
21  
22  
23

24           39. Mr. LuBahn was also provided a company vehicle that he has refused to  
25 return.  
26  
27

28           40. As a result of Defendants' actions, 3BA has suffered and will continue to  
29 suffer substantial, immediate, and irreparable harm and damages.  
30  
31  
32

#### 33                           IV. FIRST CAUSE OF ACTION

##### 34                                   Breach of Common Law Confidentiality Obligations

35           41. The allegations contained in paragraphs 1 through 40 are incorporated by  
36 reference herein.  
37  
38  
39

40           42. During their employment with 3BA, Mr. LuBahn and Mr. Ellis had  
41 unlimited access to extensive confidential proprietary information and trade secrets  
42 belonging to 3BA.  
43  
44  
45  
46  
47

1           43.     Mr. LuBahn and Mr. Ellis learned of this confidential proprietary  
2  
3 information and trade secrets within the context of their confidential relationship with 3BA.

4           44.     The disclosure or threatened disclosure of 3BA's confidential proprietary  
5  
6 information and trade secrets constitutes a material breach of Mr. LuBahn's and Mr. Ellis'  
7  
8 common law confidentiality obligations.  
9

10           45.     As a result of this violation of common law duties, 3BA has suffered and  
11  
12 will continue to suffer substantial and irreparable harm and damages if Mr. LuBahn and  
13  
14 Mr. Ellis are not enjoined from using 3BA's confidential and proprietary information to  
15  
16 form a competing 3-on-3 professional basketball league.  
17

## 18                                   V.     SECOND CAUSE OF ACTION

### 19                                                 Misappropriation of Trade Secrets

20           46.     The allegations contained in paragraphs 1 through 45 are incorporated by  
21  
22 reference herein.  
23

24           47.     During their employment with 3BA, Mr. LuBahn and Mr. Ellis had  
25  
26 unlimited access to trade secrets belonging to 3BA.  
27

28           48.     Mr. LuBahn's and Mr. Ellis' statements regarding their intent to use 3BA's  
29  
30 trade secrets in furtherance of developing a competing 3-on-3 professional basketball  
31  
32 league constitutes actual and/or threatened misappropriation of trade secrets in violation of  
33  
34 the Uniform Trade Secrets Act, Chapter 19.108 RCW.  
35  
36

37           49.     3BA has suffered substantial and irreparable harm and damages as a result  
38  
39 of Mr. LuBahn's and Mr. Ellis' violation of the Uniform Trade Secrets Act.  
40  
41

42           50.     If Mr. LuBahn and Mr. Ellis are not enjoined from misappropriating 3BA's  
43  
44 trade secrets, 3BA will continue to suffer immediate substantial and irreparable harm and  
45  
46 damages.  
47

**VI. THIRD CAUSE OF ACTION**

Breach of Fiduciary Duty/Common Law Duty of Loyalty

51. The allegations contained in paragraphs 1 through 50 are incorporated by reference herein.

52. Defendants initiated discussions regarding their intent to establish a competing 3-on-3 professional basketball league with 3BA's potential investors and/or franchisees, and, upon information and belief, shared or promised to share confidential proprietary information and trade secrets in those discussions, while still employed by 3BA, in breach of their duty of loyalty to 3BA.

53. As a result of Mr. LuBahn's and Mr. Ellis' breach of fiduciary duty and common law duty of loyalty, 3BA has suffered substantial and irreparable harm and damages.

**VII. FOURTH CAUSE OF ACTION**

Tortious Interference with Business Relationship

54. The allegations contained in paragraphs 1 through 53 are incorporated by reference herein.

55. 3BA has valid business expectancies with the potential investors and franchisees that Mr. LuBahn has already contacted and attempted to persuade to invest in his new competing league instead of 3BA. Mr. LuBahn became aware of 3BA's potential investors through his employment with 3BA.

56. Mr. LuBahn was aware of the relationship and business expectancy that existed between 3BA and the potential investors and franchisees that he contacted.

57. Mr. LuBahn intentionally interfered in 3BA's business relationships, thereby causing a breach and/or termination of the business relationship.

1           58. Mr. LuBahn interfered with 3BA's business relationships for the purpose of  
2 persuading potential 3BA investors and franchisees to invest in his new competing 3-on-3  
3 professional basketball league instead of 3BA.  
4

5  
6           59. Mr. LuBahn unlawfully interfered with 3BA's business relationships by  
7 making significant fraudulent misrepresentations when he claimed that he personally  
8 owned 3BA's intellectual property and 3BA did not.  
9

10           60. 3BA has suffered substantial damages and irreparable harm as a result of  
11 Defendants' tortious interference with its business relationships.  
12

### 13                                   **VIII. FIFTH CAUSE OF ACTION**

#### 14                                   Libel and Slander

15           61. The allegations contained in paragraphs 1 through 60 are incorporated by  
16 reference herein.  
17

18           62. On information and belief, Mr. LuBahn has spoken and/or written  
19 malicious, false and defamatory statements to third parties regarding 3BA and/or its  
20 employees, including Mr. Claunch.  
21

22           63. Mr. LuBahn has also made malicious, false, and defamatory statements to  
23 third parties by claiming that 3BA does not own its intellectual property.  
24

25           64. 3BA has suffered damages as a result of Defendants' libelous and slanderous  
26 communications.  
27

### 28                                   **IX. SIXTH CAUSE OF ACTION**

#### 29                                   Violation of Lanham Act, 15 U.S.C. § 1125

30           65. The allegations contained in paragraphs 1 through 64 are incorporated by  
31 reference herein.  
32

1           66. On information and belief, Mr. LuBahn and Mr. Ellis have engaged in  
2 trademark and copyright infringement by making unauthorized reproductions and  
3 distributions of 3BA's exclusive works, including its trademarks, copyrights, domain  
4 names, and business name ("3BA"), in violation of the Lanham Act, 15 U.S.C. § 1125.  
5  
6

7           67. Mr. LuBahn and Mr. Ellis are causing confusion with investors and damage  
8 to 3BA by wrongfully using the name "3BA" or "3BA Properties LLC" to conduct the  
9 business of their competing 3-on-3 professional basketball league, which is identical to  
10 3BA.  
11  
12

13           68. 3BA has suffered substantial damages due to Defendants' unauthorized use  
14 of its trademarks, business name, domain names, and copyrighted works.  
15  
16

## 17                           X. SEVENTH CAUSE OF ACTION

### 18                                           Conversion

19           69. The allegations contained in paragraphs 1 through 68 are incorporated by  
20 reference herein.  
21  
22

23           70. Mr. LuBahn has unauthorized possession of 3BA's company vehicle,  
24 company laptop and Blackberry device. Mr. LuBahn has refused to return the company  
25 property.  
26  
27

28           71. Mr. Ellis has unauthorized possession of 3BA's company laptop and  
29 Blackberry device.  
30  
31

32           72. Mr. LuBahn transferred 3BA's website to a new website manager and  
33 changed all the passwords, thereby converting 3BA's website for his own use and depriving  
34 3BA of any access to the website.  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1           73. Mr. LuBahn hacked into all 3BA employee email accounts and directed  
2 employees' incoming emails to his personal email account. Mr. LuBahn reviewed 3BA  
3 employees' emails to gain an unfair advantage in forming his competing league.  
4  
5

6           74. Defendants stole copies of key company records, documents, and electronic  
7 data, including but not limited to franchise agreements, the official game rulebook, the  
8 constitution, by-laws, and contracts with athletes, coaches and vendors. They also kept  
9 copies of customer lists, investor and potential investor lists, LLC agreements, lists of  
10 sponsors, key vendors and potential sponsors. Mr. LuBahn also made copies of  
11 innumerable 3BA emails and correspondence for his own purposes.  
12  
13  
14  
15  
16  
17

18           75. 3BA has suffered substantial damages as a result of Defendants' conversion  
19 of 3BA's company laptop, Blackberry device, website, employee email accounts, records,  
20 documents and electronic data.  
21  
22  
23

## 24                           **XI. EIGHTH CAUSE OF ACTION**

### 25                                           Misrepresentation and Fraud

26           76. The allegations contained in paragraphs 1 through 75 are incorporated by  
27 reference herein.  
28  
29  
30  
31

32           77. Mr. LuBahn and Mr. Ellis made fraudulent material misrepresentations to  
33 3BA during their 3BA employment that at all times they were contacting and developing  
34 investors and selling franchises on 3BA's behalf. These fraudulent misrepresentations were  
35 clearly false because Mr. LuBahn and Mr. Ellis were actually contacting and developing  
36 investors to finance their competing league. As employees of 3BA, 3BA reasonably relied  
37 on Mr. LuBahn's and Mr. Ellis' fraudulent misrepresentations that they were at all times  
38 meeting with and developing investors and selling franchises on 3BA's behalf.  
39  
40  
41  
42  
43  
44  
45  
46  
47



1 78. As a result of Mr. LuBahn's and Mr. Ellis' fraudulent misrepresentations,  
2  
3 3BA has suffered substantial damages.

4  
5 **XII. NINTH CAUSE OF ACTION**

6  
7 Violation of Computer Fraud and Abuse Act, 18 U.S.C. § 1030

8  
9  
10 79. The allegations contained in paragraphs 1 through 78 are incorporated by  
11  
12 reference herein.

13  
14 80. The computers used by 3BA are involved in interstate and foreign  
15  
16 commerce and communication, and are protected computers under 18 U.S.C. § 1030(e)(2).

17  
18 81. Mr. LuBahn knowingly and intentionally accessed 3BA's company laptop  
19  
20 without authorization after his termination from 3BA employment.

21  
22 82. Through unauthorized access of 3BA's company laptop, Mr. LuBahn  
23  
24 obtained and used valuable information in violation of 18 U.S.C. § 1030(a)(2).

25  
26 83. Mr. LuBahn knowingly, willfully, and with an intent to harm 3BA accessed  
27  
28 3BA's company laptop without authorization and obtained valuable information which Mr.  
29  
30 LuBahn improperly used to harm 3BA and its investors and to start his own competing  
31  
32 business in violation of 18 U.S.C. § 1030(a)(4).

33  
34 84. 3BA has been substantially damaged by Defendants' actions, including the  
35  
36 loss of confidential proprietary information, trade secrets and valuable electronic  
37  
38 documents as a direct and proximate result of Defendants' actions.

39  
40 **XIII. TENTH CAUSE OF ACTION**

41  
42 Violation of Stored Communications Act, 18 U.S.C. §§ 2701, et seq.

43  
44 85. The allegations contained in paragraphs 1 through 84 are incorporated by  
45  
46 reference herein.

1           86. As a result of Mr. LuBahn's conduct as described herein, Defendants  
2  
3 violated the provisions of the Stored Communications Act by intentionally and willfully  
4  
5 accessing, without permission, the facilities through which 3BA employees' email accounts  
6  
7 were provided.

8           87. 3BA's employees' email accounts contain confidential proprietary  
9  
10 information, contacts, and trade secrets, which are not readily accessible to the general  
11  
12 public.  
13

14           88. Mr. LuBahn knowingly and intentionally accessed without authorization  
15  
16 3BA employees' confidential electronic communications that were stored on their company  
17  
18 email accounts.  
19

20           89. Mr. LuBahn obtained access to 3BA employees' confidential electronic  
21  
22 communications while they were in electronic storage and thereafter used and disclosed the  
23  
24 electronic communications to, among other things, develop a competing business, causing  
25  
26 3BA damages, including lost proprietary information, contacts, investors, and confidential  
27  
28 electronic communications.  
29

30           90. 3BA was damaged and continues to be damaged by Defendants' unlawful  
31  
32 conduct.  
33

#### 34                           **XIV. ELEVENTH CAUSE OF ACTION**

##### 35                           Violation of Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et. seq* ("RICO").

36           91. The allegations contained in paragraphs 1 through 90 are incorporated by  
37  
38 reference herein.  
39

40           92. Defendants' actions to commit a criminal conspiracy to steal 3BA's  
41  
42 confidential proprietary information, trade secrets, and resources to start a competing 3-on-  
43  
44 3 basketball league by utilizing wire fraud in interstate commerce to communicate with  
45  
46  
47

1 3BA's potential investors in other states, are prohibited by RICO, and subject Defendants  
2 to civil and criminal liability.  
3

4 93. As a result of Defendants' actions prohibited by RICO, 3BA has suffered  
5 substantial damages.  
6  
7

8 **XV. ENTITLEMENT TO EQUITABLE RELIEF**  
9

10 94. The allegations contained in paragraphs 1 to 93 are incorporated by  
11 reference herein.  
12

13 95. Defendants' unlawful actions have caused, and unless restrained, will  
14 continue to cause, significant and irreparable harm to 3BA through: Defendants' continued  
15 tortious interference with 3BA's business relationships and expectancies; Defendants'  
16 actual/and or threatened misappropriation of 3BA's confidential proprietary information  
17 and trade secrets; Defendants' continued misrepresentations regarding their ownership of  
18 3BA's intellectual property; and Defendants' attempts to start a competing 3-on-3  
19 professional basketball league.  
20  
21

22 96. Plaintiff has no adequate remedy at law.  
23

24 97. Plaintiff is entitled to injunctive relief against Defendants under RCW  
25 19.108.020, which authorizes injunctive relief proscribing the misappropriation of trade  
26 secrets.  
27

28 98. Plaintiff is entitled to injunctive relief against Defendants as a matter of  
29 common law.  
30  
31

32 **XVI. PRAYER FOR RELIEF**  
33

34 Plaintiff, accordingly, prays for the following relief:  
35

36 A. An injunction prohibiting Defendants from contacting in any way 3BA's potential  
37 investors and/or franchisees; prohibiting Defendants from claiming ownership of 3BA's  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 intellectual property; prohibiting Defendants from using or disclosing 3BA's confidential  
2 proprietary information and trade secrets; and prohibiting Defendants from establishing a  
3 competing 3-on-3 professional basketball league that in any way utilizes, incorporates or is  
4 based upon 3BA's intellectual property, confidential proprietary information, trade secrets or  
5 any other 3BA information or resources.  
6  
7  
8  
9

10 B. Judgment against Defendants for all actual and consequential damages as may be  
11 provided by law.  
12

13 C. An award of attorneys fees and costs.  
14

15 D. For such other and further relief as this Court deems just and proper.  
16  
17  
18

19 DATED: May 18, 2010

s/ Javier F. Garcia, WSBA No. 38259

Michael T. Reynvaan, WSBA No. 12943

Javier F. Garcia, WSBA No. 38259

Sonia D. Cook, WSBA No. 40786

**Perkins Coie LLP**

1201 Third Avenue, Suite 4800

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

Attorneys for Plaintiff

3BA International LLC

**CERTIFICATE OF SERVICE**

I certify that on May 18, 2010, I caused service to be made on the plaintiff's attorney of record by the method(s) indicated a copy of the foregoing COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF:

David Blutcher  
dablutcher@yahoo.com

Attorneys for Plaintiff

☐ Via Hand Delivery  
☐ Via U.S. Mail, 1st Class, Postage Prepaid  
☐ Via Overnight Delivery  
☐ Via Facsimile  
☒ Via Email  
☐ Via E-filing

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 18<sup>th</sup> day of May, 2010.

s/ Javier F. Garcia, WSBA No. 38259  
JGarcia@perkinscoie.com

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Telephone: 206.359.8000  
Facsimile: 206.359.9000

Attorneys for Plaintiff  
3BA INTERNATIONAL LLC